

Residential Tenancies and Rooming Accommodation and Other Legislation Amendment Bill 2024

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 38 of the *Human Rights Act 2019*, I, Meaghan Scanlon MP, Minister for Housing, Local Government and Planning and Minister for Public Works, make this statement of compatibility with respect to the Residential Tenancies and Rooming Accommodation and Other Legislation Bill 2024 (the Bill).

In my opinion, the Residential Tenancies and Rooming Accommodation and Other Legislation Bill 2024 is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

Rental law reform

The Bill will amend the *Residential Tenancies and Rooming Accommodation Act 2008* (RTRA Act) to address community concerns about the impact of current housing market conditions and cost of living pressures on Queensland's renting households.

The Bill will also strengthen renters' rights and make a tangible impact to the almost one third of Queensland households who rent, by ensuring Queensland's rental laws align with National Cabinet's *A Better Deal for Renters* (ABDR) and reforms announced through *Homes for Queenslanders*.

The *Queensland Housing Strategy Action Plan 2017-2020* committed to a review of the RTRA Act to create modern rental laws to better protect renters and property owners and improve housing stability in the private rental market. Delivering staged rental reform, including reforming the rental bond process and extending entry notice periods, is a government election commitment. Stage 1 rental law reforms were introduced through the *Housing Legislation Amendment Act 2021*, most of which commenced on 1 October 2022, with a staggered introduction for Minimum Housing Standards.

On 20 October 2022, the then Premier of Queensland hosted the Queensland Housing Summit to address challenges in meeting the housing needs of Queenslanders. The *Queensland Housing Summit Outcomes Report* (Housing Summit Report) was released on 1 December 2022 with \$56 million in new funding for housing and cost of living support to help Queenslanders sustain tenancies and assist people experiencing severe rental stress. An action under the Housing Summit Report is the ongoing delivery of rental reforms, to balance the rights and interests of

renters and rental property owners and sustain private investment.

On 16 August 2023, National Cabinet agreed to ABDR to harmonise and strengthen renters' rights throughout Australia across nine priorities:

- ensuring only genuine reasonable grounds are used to end a tenancy
- ensuring provisions to allow appeals against retaliatory action are fit for purpose
- moving towards a national standard of no more than one rent increase per year
- banning the soliciting of rent bidding
- improving the rights and interests of renters experiencing domestic violence
- limiting break lease fees for fixed term agreements to a maximum prescribed amount
- protecting renters' information used in the application process and throughout the tenancy
- considering options for better regulation of short-stay residential accommodation
- phasing in minimum quality standards for rental properties

On 6 February 2024, the Queensland Government announced Homes for Queenslanders, which is a long-term, whole of system plan to ensure Queensland has an agile and sustainable housing system where all Queenslanders can access safe, secure and affordable housing. Homes for Queenslanders outlines a range of initiatives over five pillars, including —Build more homes faster; Support Queensland renters; Help first homeowners into the market; Boost our social housing; and Work towards ending homelessness.

Homes for Queenslanders initiatives to support Queensland renters include over \$160 million of additional funding to help tackle cost of living through an expanded range of support available to more eligible renters to find, get and keep a rental home. The Queensland Government has also committed to further rental law reform to strengthen renters' rights and stabilise rents by:

- establishing a portable bond scheme to allow renters to transfer their bond when relocating from one rental property to another;
- setting clear expectations through a rental sector Code of Conduct to foster appropriate and professional practices in Queensland's rental market;
- helping to stabilise rents by banning all forms of rent bidding and applying the annual limit for rent increases to the rental property not the tenancy;
- making it easier for renters to make changes to rental properties they need to live safely and securely in their rental home;

- protecting renters’ privacy by requiring 48 hours entry notice and a prescribed form to be used to apply for a rental home, as well as requiring that property owners and property managers ensure that the private information of renters is securely collected, stored and destroyed;
- limiting re-letting costs based on how long is left on a fixed-term lease;
- ensuring renters have a fee-free option to pay rent and receive utility charges promptly; and
- ensuring that renters have a choice about how they apply for a rental property.

Note: amendments to the RTRA Act cover all agreement types (general residential tenancy agreements, moveable dwelling agreements and rooming accommodation agreements) in most instances. For ease of reference, the term ‘renters’ is used to describe tenants in general residential tenancies and moveable dwelling premises, and residents in rooming accommodation. ‘Property owners’ is used to describe lessors in general residential tenancy and moveable dwelling agreements and providers in rooming accommodation agreements. Where the reform relates to a specific agreement type, the more specific terms ‘tenant’, ‘resident’, ‘lessor’ and ‘provider’ are used.

CPD for property agents

The *Property Occupations Act 2014* (Property Occupations Act) provides an occupational licensing framework for real estate agents, real estate salespeople, real property auctioneers and resident letting agents (collectively referred to in this Statement as property agents). Property agents hold a position of significant trust in relation to their clients. To be eligible for a licence or registration certificate under the Property Occupations Act, an individual must hold the educational or other qualifications approved by the chief executive. The Property Occupations Act does not currently require further professional development or training.

The Bill provides for the establishment of mandatory continuing professional development (CPD) for property agents in Queensland.

As part of the Queensland Government’s 2020 election commitment plan to support jobs, help small business, and invest in Queensland industry and local communities, the Government made the following election commitment:

Subject to consultation with key stakeholders and the results of a regulatory impact statement, legislate to implement mandatory continuing professional development for property agents.

The Bill amends the Property Occupations Act to progress the Government’s 2020 election commitment to introduce mandatory CPD for property agents.

The Bill provides the legislative framework for a new ‘light regulatory’ CPD scheme which will apply to individuals that hold a real estate agent licence, property auctioneer licence, resident letting agent licence, or real estate salesperson registration certificate under the Property Occupations Act. The Bill amends the Property Occupations Act to require property agents to complete CPD requirements approved by the chief executive for a CPD year, unless

exceptional circumstances apply.

The Bill also amends the Property Occupations Act to provide that failure to undertake CPD as required (unless exceptional circumstances apply) is grounds for the chief executive to refuse to renew or restore a person's licence or registration certificate.

The Bill also makes minor consequential amendments to the *Fair Trading Inspectors Act 2014* to give fair trading inspectors power to require, from property agents who have declared they have completed the annual CPD requirements, production of relevant documents and information for the purpose of monitoring and enforcing compliance with the new CPD requirements.

The Bill will amend the:

- *Residential Tenancies and Rooming Accommodation Act 2008*
- Residential Tenancies and Rooming Accommodation Regulation 2009
- *Body Corporate and Community Management Act 1997*
- *Fair Trading Inspectors Act 2014*
- *Local Government Act 2009*
- *Property Occupations Act 2014*
- State Penalties Enforcement Regulation 2014
- *Superannuation (State Public Sector) Act 1990*
- Local Government Regulation 2012
- Superannuation (Public Employees Portability) Regulation 2019

The objectives of the Bill are to:

1. Improve the rental bond process and ensure bond refunds are fair and transparent and claims against the rental bond are genuine and substantiated.
2. Balance renters' right to privacy with property owners' right to information by extending entry notice periods and appropriate handling and disposal of renters' information.
3. Make the rental application process fairer and easier by giving renters a choice about how to submit their rental application and prescribing a rental application form that limits the information that can be collected from a prospective renter.
4. Address cost of living pressures for renters by protecting renters from unreasonable fees and charges, including reletting costs.

5. Support renters and rental property owners to agree to changes that can be made to the rental property to meet occupants' changing needs.
6. Help to stabilise the private rental market by applying the annual limit for rent increases to the rental property not the tenancy.
7. Progress National Cabinet reform priorities under ABDR.
8. Appropriately balance the rights of parties in the rental relationship to improve the rental experience for Queensland renters and property owners and clarify the expectations of all parties in the rental sector.
9. Support enhanced compliance and enforcement functions.
10. Address technical and procedural issues associated with the ending of a residential tenancy agreement or rooming accommodation agreement as part of an economic reasons termination process which is to be introduced into the *Body Corporate and Community Management Act 1997* (BCCM Act) by the *Body Corporate and Community Management and Other Legislation Amendment Act 2023*.
11. Make minor amendments to the local government employee superannuation scheme to remove the requirement for mandatory superannuation contributions by some permanent employees and to update the name of the scheme trustee.

Human Rights Issues

Rental law reform

Balancing the human rights of renters and rental property owners

The Bill seeks to balance the rights and interests of renters and rental property owners.

On the one hand, property owners have a right to control their property in the way they wish. Section 24 of the *Human Rights Act 2019* provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. The right includes protection from arbitrary deprivation of property. Deprivation in this sense has been held to include the substantial restriction on a person's use or enjoyment of their property. Property is likely to include all real and personal property interests recognised under general law. A deprivation of property will be arbitrary if it is capricious, unjust, unreasonable or disproportionate to a legitimate aim sought.

On the other hand, renters also have human rights related to access to housing. By improving housing stability in the private rental market in Queensland, the amendments protect and promote human rights related to home as well as threats to physical and mental integrity which come with housing insecurity, such as:

- The right to life (section 16 of the *Human Rights Act 2019*), which may impose positive obligations to address the general conditions in society that may give rise to direct threats to life such as homelessness. Further, the right to life encompasses the freedom to ‘enjoy life with dignity’.¹ The UN Special Rapporteur on the Right to Adequate Housing has emphasised that ‘the right to life cannot be separated from the right to a secure place to live’.²
- The freedom to choose where to live (section 19 of the *Human Rights Act 2019*).
- Property rights (section 24 of the *Human Rights Act*), which may be promoted by access to the property required to live a life with dignity, such as housing.
- Right to privacy, family and home (section 25(a) of the *Human Rights Act 2019*), which extends to a person’s physical and mental integrity.³ A person’s physical and mental integrity may be imperilled by homelessness.
- Protection of families and the best interests of the child (section 26(1) and (2) of the *Human Rights Act 2019*). Under section 26(1), the State has a positive obligation to protect the existence of the family. Under section 26(2), children have a right to protection in their best interests, including housing security.⁴
- Security of the person (section 29(1) of the *Human Rights Act 2019*), which encompasses freedom ‘from injury to the body and the mind, or bodily and mental integrity’.⁵ Homelessness threatens a person’s physical and mental integrity.

The Bill seeks to balance the competing human rights at stake. Courts overseas have recognised that ‘the choice of measures for securing the housing needs of the community and of the timing for their implementation, necessarily involve consideration of complex social, economic and political issues’.⁶ For that reason, in this context, the legislature is recognised to have a wide margin of appreciation to determine what balance between the competing interests is fair.

Although the Bill protects and promotes human rights related to access to housing, the Bill also engages or limits a number of other human rights. The proportionality of these limits is considered below.

Increased penalties and introduction of new penalties

¹ UN Human Rights Committee, *General comment No. 36 – Article 6: right to life*, 124th sess, UN Doc CCPR/C/GC/36 (3 September 2019) [3].

² Leilani Farha, Special Rapporteur, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living*, UN Doc A/71/310 (8 August 2016) 11 [27].

³ Explanatory note, Human Rights Bill 2018 (Qld) 22.

⁴ UN Committee on the Rights of the Child, *General comment No. 21 (2017) on children in street situations*, UN Doc CRC/C/GC/21 (21 June 2017) [28].

⁵ UN Human Rights Committee, *General comment No. 35 – Article 9: liberty and security of person*, 124th sess, UN Doc CCPR/C/GC/35 (16 December 2014) [9].

⁶ *Hutten-Czapska v Poland* (2007) 45 EHRR 4; [2006] ECHR 628, [166].

The following clauses increase the maximum penalties for a range of offences:

- Clauses 7, 13 and 18 of the Bill increase the maximum penalty in sections 57(1), 57(2), 87(1) and 101(1) of the RTRA Act from 20 penalty units to 50 penalty units.
- Clause 11 of the Bill increases the maximum penalty in section 77 of the RTRA Act from 20 penalty units to 40 penalty units.

The following clauses introduce a new range of offences:

- Clauses 7 and 10 of the Bill insert new offences in sections 57(3) and 76AA of the RTRA Act with a maximum penalty of 50 penalty units.
- Clauses 16 and 20 of the Bill insert new offences in sections 93A(2) and 105C(2) of the RTRA Act with a maximum penalty of 40 penalty units.
- Clauses 50, 51, 54 and 80 of the Bill insert new offences in sections 57B, 57C, 57D, 76C, 76D, 76E, 136AA, 457D and 457E of the RTRA Act with a maximum penalty of 20 penalty units.
- Clauses 52 and 53 of the Bill insert new offences in sections 84B(1) and 99B(1) of the RTRA Act with a maximum penalty of 40 units and new offences in sections 84B(2) and 99B(2) with a maximum penalty of 20 penalty units.

The following clauses replace existing offences with new offences with a different scope, while retaining the same penalty range:

- Clauses 15 and 19 of the Bill replace offences in sections 93(1) and 105B(1) of the RTRA Act with a maximum penalty of 20 penalty units. These offences relate to rent increases, though the offences are broader as they now capture increases in rent for the residential premises or resident's room, even if a new residential tenancy agreement or accommodation agreement has been entered into.
- Clauses 38 and 43 of the Bill expand the confidentiality requirements in sections 308I and 381I of the RTRA Act, while retaining the existing maximum penalty of 100 penalty units.
- Clause 84 of the Bill amends the definition of 'confidential information' in section 527 of the RTRA Act, while retaining the existing maximum penalty of 50 penalty units for recording or disclosing confidential information.

Further, schedule 1 of the Bill amends schedule 1 of the *State Penalties Enforcement Regulation 2014* to set out the penalty units in infringement notice fines for new and updated offences under the RTRA Act.

These new and increased penalties do not apply retrospectively. That is, a person will not be subject to new or increased penalties for conduct they have already engaged in. The prospective operation of the new and increased penalties is reinforced by the transitional provisions in new chapter 14, part 8 of the RTRA Act, inserted by clauses 47 and 85 of the Bill.

The new transitional regulation making power in section 520A of the RTRA Act, inserted by clause 85 of the Bill, will also not allow the offences to operate retrospectively. Although a regulation made under new section 588 may operate retrospectively, it may only have retrospective operation to a day that is not earlier than the date of assent.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

Increased penalties and the introduction of new penalties may potentially limit the right to property (section 24 of the *Human Rights Act 2019*). The definition of ‘property’ in the *Acts Interpretation Act 1954* includes ‘money’. The imposition of a fine will in principle constitute interference with the right to property as it deprives the person concerned of an item of property, namely the sum that has to be paid.⁷

However, the right to property will only be limited if the property is deprived arbitrarily. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to retain property in the form of money.
- Purpose – The purpose of introducing greater penalties and introducing new offences is to enhance protections for renters to ensure a fairer rental market. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments ensure there is sufficient deterrence and appropriate consequences for engaging in prohibited conduct and is an effective measure to increase protections for renters in Queensland.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a fairer rental market for renters. The amendments do not result in criminal offences that operate retrospectively or result in the imposition of greater penalties retrospectively. Accordingly, the right against retrospective criminal laws in s 35 of the *Human Rights Act 2019* is protected. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – On the one hand, the impact on property is relatively minor. The penalties are not excessive, and the amendments merely set a maximum penalty that may be

⁷ *Krayeva v Ukraine* [2022] ECHR 41, [23].

imposed, leaving the court with a sentencing discretion in the individual circumstances of each particular case. On the other hand, there is a compelling public interest in proscribing the conduct through penalties. The amendments are necessary to ensure greater protections for renters in Queensland. The amendments adjust the balance of rights in the rental relationship given that some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs. Ultimately, the need for a stable, transparent and fair private rental market, outweighs the relatively small impacts on property.

As the interference with property is proportionate and not arbitrary, the right to property is not limited by these amendments. Accordingly, the amendments increasing penalties or introducing new penalties are compatible with human rights.

Fixed amount rents (clauses 7 and 10 of the Bill)

Clause 7 of the Bill amends section 57 of the Act to ensure more effective protections against rent bidding by:

- extending the prohibition on advertising or otherwise offering a residential tenancy other than for a fixed amount (the prohibition now applies to any person rather than only a property owner or their agent);
- extending the prohibition on accepting a rental bond if the residential tenancy was advertised or offered other than for a fixed amount (the prohibition now applies to any person rather than only a property owner or their agent);
- introducing a prohibition on soliciting or otherwise inviting an offer more than the fixed amount; and
- introducing a prohibition on accepting an offer more than the fixed amount.

Clause 10 of the Bill inserts section 76AA to introduce similar requirements for rooming accommodation to be offered for a rent at a fixed amount.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the following human rights:

- freedom to choose where to live (section 19 of the *Human Rights Act 2019*);
- the right to property (section 24 of the *Human Rights Act 2019*);
- the right to freedom of expression (section 21 of the *Human Rights Act 2019*); and
- the right to non-interference with privacy, family and home (section 25(a) of the of the *Human Rights Act 2019*).

The amendments may limit the right to property as fixed rent amounts may restrict the manner in which a person may deal with, and benefit from, their investment property. One of the normal incidents of property is that an owner is entitled to receive the rent someone is willing to pay in exchange for granting possession of the property. Ultimately, preventing rent bidding will result in a cost to property owners (equal to the difference in renters' willingness to pay and the advertised price).

However, the right to property will only be limited if the property is deprived arbitrarily. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Preventing rent bidding may also prevent potential renters from securing a tenancy by offering to pay more. That may impact on their human rights relating to housing, including the freedom to choose where to live (section 19 of the *Human Rights Act 2019*) and the rights to property and home (sections 24 and 25 of the *Human Rights Act 2019*). However, the rights to property and home will only be limited if the interference with property or home is unlawful or arbitrary. That will be addressed below when considering the factors in section 13 of the *Human Rights Act 2019*.

The right to freedom of expression may also be limited through the prohibitions on advertising, offering, soliciting or otherwise inviting an offer on a rental property other than for a fixed amount. The freedom of expression protects a person's ability to impart information and ideas of all kinds, including commercial advertising.⁸

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – The ability to own and protect property underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. Similarly, the value of freedom of commercial expression lies in the nature of our economic system, which is based on the existence of a free market. The orderly operation of that market depends on businesses and consumers having access to abundant and diverse information.⁹ For potential renters who wish to engage in rent bidding, what is at stake is their ability to secure housing, which is essential to living a life with dignity.
- Purpose – The purpose of the amendments is to enhance protections for renters, to stabilise rents and ensure a fairer rental market. Renters have been experiencing significant increases in rent as the rental market has tightened, forcing many to move from their long-term rental premises because they are unable to afford the increased

⁸ UN Human Rights Committee, *General comment No. 34 – Article 19: Freedoms of opinion and expression*, 102nd sess, UN Doc CCPR/C/GC/34 (12 September 2011) [11].

⁹ *R v Guignard* [2002] 1 SCR 472, [21].

amount. This serves to protect and promote human rights related to access to housing in sections 16, 19, 24, 25, 26 and 29 of the *Human Rights Act 2019* (see pages 5 and 6 above). This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.

- Relationship between limitation and its purpose – By prohibiting rent bidding and requiring fixed amount rents, the amendments help to ensure a more transparent and fair rental market. It is expected that the cost to property owners (represented by the difference in renters’ willingness to pay and the advertised price) will transfer to renters as a benefit in the form of reduced rent.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a more transparent and fair rental market. Currently, housing supply constraints and cost of living pressures have created severe housing affordability challenges, with very low vacancy rates and substantial increases in rent for rental properties. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – On the one hand, the ability to control one’s property and freely express commercial information are important in a society based on a free market. On the other hand, the amendments ensure a fairer rental market. Currently, housing supply constraints and cost of living pressures have created severe housing affordability challenges, with very low vacancy rates and substantial increases in rent for rental properties. The prohibitions on rent bidding ensure fairness to other renters who might equally seek the rental property but are unable to pay a higher price. Ultimately, the need for a stable, transparent and fair private rental market outweighs any negative impacts on the human rights of property owners and potential renters who wish to engage in rent bidding to try to secure a home.

As the interference with property and home is proportionate and not arbitrary, those rights are not limited by these amendments. Any limits on the freedom of expression and the freedom to choose where to live are proportionate and therefore justified. Accordingly, these provisions are compatible with human rights.

Limits on the frequency of rent increases (clauses 8, 11, 14, 15, 16, 17, 19 and 21 of the Bill)

Currently, under section 93 of the RTRA Act, there is a minimum period of 12 months before a property owner or their agent can increase the rent payable. That restriction can be avoided if the property owner or their agent enters into a new agreement with new renters within that 12-month period.

To ensure the rent increase frequency limit operates effectively, the Bill introduces the following amendments:

- Clauses 8 and 11 of the Bill amend sections 61(2) and 77(2) of the RTRA Act to require the written agreement for a residential tenancy or rooming accommodation to include the date the rent was last increased. This ensures renters are aware of when the next rent increase may occur.

- Clause 14 of the Bill amends s 91(3) to require a rental increase notice to include the date the rent was last increased for the premises. Clause 14 also inserts other consequential amendments to section 91 of the RTRA Act.
- Clause 15 of the Bill amends section 93 of the RTRA Act to specify that the 12-month period applies even if the last rent increase for the residential premises related to a different tenancy agreement. The clause attaches the rent increase limit to the premises or, in relation to a moveable dwelling, either the dwelling or its site. Clause 19 amends section 105B of the RTRA Act to make a similar provision in relation to rent increases for rooming accommodation agreements. These amendments are an anti-avoidance mechanism.
- Clause 17 of the Bill amends section 94 and clause 21 inserts a new section 107A to clarify that reversion to the original rent following a rent decrease in certain circumstances does not constitute a rent increase.

To ensure the provisions operate flexibly, clause 16 inserts a new section 93B into the RTRA Act to allow the property owner to apply to QCAT to increase rent within the 12-month period on the basis of undue hardship. Clause 20, inserting new section 105C, makes a similar provision in relation to rent increases for rooming accommodation agreements.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the right to property (section 24 of the *Human Rights Act 2019*) by restricting the manner in which a person may deal with, and benefit from, their investment property. In Europe, rental control measures have been found to engage the right to property.¹⁰ While restricting the frequency with which rents may be increased is not a rental control measure, one of the normal incidents of property is that an owner is entitled to determine the amount of rent they are happy to receive in exchange for granting possession of the property, and to periodically change the amount of rent they are happy to receive when entering into new agreements. To the extent the amendments restrict an owner's ability to enjoy these incidents of property ownership, there is a risk that the owner's property rights will be limited.

The requirement to disclose the last rent increase may also potentially limit the right to privacy in section 25(a) of the *Human Rights Act 2019*, and the freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).¹¹

However, the right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not

¹⁰ *Mellacher v Austria* (1990) 12 EHRR 391; [1989] ECHR 25; *Edwards v Malta* [2006] ECHR 887; *Lindheim v Norway* [2012] ECHR 985.

¹¹ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one’s property free from interference and the ability to keep information to oneself.
- Purpose – The purpose of the amendments is to enhance protections for renters to ensure a more transparent and fair rental market, by giving them certainty as to when their rent can be next increased. This also serves to protect and promote human rights related to access to housing in sections 16, 19, 24, 25, 26 and 29 of the *Human Rights Act 2019* (see pages 5 and 6 above). Clauses 16 and 20 are also anti-avoidance mechanisms with the purpose of ensuring that the frequency limits on rent increases are not avoided. These are proper purposes that are consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments ensure the rent increase frequency limit operates effectively, increasing protections for renters. By applying the annual limit on rent increases to the premises, rather than the agreement, the amendments also help to achieve their anti-avoidance purpose.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a more transparent and fair rental market. They operate flexibly in allowing an application to be made to QCAT to increase rent within the 12-month period on the basis of undue hardship. Given this important safeguard, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The frequency limits on rent increases are necessary to ensure a more transparent and fair rental market. Currently, housing supply constraints and cost of living pressures have created severe housing affordability challenges, with very low vacancy rates and substantial increases in rent for rental properties. Ensuring the rental increase frequency limit operates effectively ensures a stable, transparent and fair private rental market. Ultimately, the need for a stable, transparent and fair private rental market, outweighs the impacts on property, privacy and freedom of expression.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by these amendments. Any limits on the freedom of expression are proportionate and therefore justified. Accordingly, these provisions related to frequency limits on rent increases are compatible with human rights.

Exempt lessors (clauses 12, 14, 15 and 16 of the Bill)

Flexibility is required for lessors that apply an income-based rent policy (where the amount of rent payable is based on a percentage of household income, which may fluctuate). Clause 12 inserts a new s 82A into the RTRA Act, which defines lessors exempt from the annual limit on rent increases.

Currently, sections 93 and 93B of the RTRA Act do not apply to a lessor if the lessor is:

- the chief executive of the department in which the *Housing Act 2003* is administered, acting on behalf of the State; or
- the State and the renter is an officer or employee of the State; or
- the replacement lessor under a community housing provider tenancy agreement.

Clause 12 includes the above lessors in the new definition of ‘exempt lessor’ and also includes:

- a lessor of a premises that receives government funding under the *Housing Act 2003* for the premises and the amount of rent payable for the premises is determined by household income;
- a lessor of a premises that receives government funding under the *Community Services Act 2007*, in accordance with a funding declaration under that Act for the premises, and the amount of rent payable for the premises is determined by household income; and
- other lessors prescribed by regulation.

Other social and affordable housing (such as Build-to-Rent) are not exempt, as these providers do not apply an income-based rental policy.

Clauses 15 and 16 of the Bill apply this new expanded definition of exempt lessor to the frequency limit on rent increases in sections 93 and 93B of the RTRA Act.

Clause 49 of the Bill also inserts a new definition into the dictionary of the RTRA Act for ‘exempt lessor’.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

By expanding the lessors who are exempt from the annual limit on rent increases, more tenants are exposed to unregulated rent increases. Withdrawing protection from rent increases for these tenants may potentially limit the following human rights:

- the freedom to choose where to live (section 19 of the *Human Rights Act 2019*);
- the right to property because residential tenancies are likely a form of property (section 24 of the *Human Rights Act 2019*);

- the right to non-interference with privacy, family and home (section 25(a) of the *Human Rights Act 2019*); and
- protection of families and the best interests of the child (section 26(1) and (2) of the *Human Rights Act 2019*).

Some of those human rights have internal limitations. The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy, family or home is unlawful or arbitrary. In a human rights context, ‘arbitrary’ refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limits or interference with these human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake is the stability of accommodation for tenants who rent from an exempt lessor. Living precariously threatens the ability to live a life with dignity.
- Purpose – The purpose of exempting certain lessors from the annual limit on rent increases is to allow flexibility for lessors that apply an income-based rent policy (where the amount of rent payable is based on a percentage of household income, which may fluctuate).
- Relationship between the limitation and its purpose – Exempting the lessors set out in new section 82A will allow more flexibility for lessors that apply an income-based rent policy.
- Less restrictive alternatives – Consideration was given to the possibility of retaining the existing categories of exempt lessors without extending the exemption further. However, this would not be as effective in ensuring flexibility for lessors that receive funding under the *Housing Act 2003* or the *Community Services Act 2007* and apply an income-based rent policy. Consideration was also given to reducing the requirements in sections 91 to 93 of the RTRA Act, rather than exempting them altogether. However, this option would also come at the cost of flexibility. As there is no less restrictive way to ensure flexibility, the limit on human rights is necessary to achieve that purpose.
- Fair balance – On the one hand, the importance of protecting renters through limits on the frequency of rent increases is important for safeguarding their human rights related to housing. However, income-based rent policies are an effective tool to provide sustainable social housing such as community housing and the department requires lessors that receive funding under the *Housing Act 2003* and the *Community Services Act 2003* to apply them. Subjecting these to the general rent increase frequency limit would undermine their ability to periodically adjust rent based on changes in their

tenants' incomes and ultimately affect their interest in participating in this part of the housing sector. On balance, the amendment is needed to ensure the continued viability of the community housing and specialist homelessness service providers.

As the interference with property and privacy is proportionate and not arbitrary, the rights to property and privacy are not limited by this amendment. The limits on the other human rights are justified. Accordingly, the exemption of certain lessors from the rent increase frequency protections is compatible with human rights.

Rent in advance (clauses 13 and 18 of the Bill)

Currently, under section 87(1) of the Act, it is an offence for a property owner or their agent to require payment of rent in advance of more than 2 weeks or 1 month, depending on the type of agreement. That means that, provided further rent is not required in advance, a property owner or their agent is free to accept further rent in advance if it is offered.

Clause 13 of the Bill amends section 87(1) to make it an offence for a person to accept payment of rent in advance of more than 2 or 4 weeks, depending on the type of agreement. Clause 18 amends section 101(1) to make a similar provision in respect of rent in advance for rooming accommodation agreements.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the following human rights:

- freedom to choose where to live (section 19 of the *Human Rights Act 2019*);
- the right to property (section 24 of the *Human Rights Act 2019*); and
- the right to non-interference with privacy, family and home (section 25(a) of the of the *Human Rights Act 2019*).

These amendments may potentially limit the right to property (section 24 of the *Human Rights Act 2019*) by restricting the manner in which a person may deal with, and benefit from, their investment property. One of the normal incidents of property is that an owner is entitled to receive the rent someone is willing to pay in exchange for granting possession of the property.

However, the right to property will only be limited if the property is deprived arbitrarily. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

Preventing the payment of rent in advance may also prevent potential renters from securing a tenancy by offering to pay more in advance. That may impact on their human rights relating to housing, including the freedom to choose where to live (section 19 of the *Human Rights Act 2019*) and the rights to property and home (sections 24 and 25 of the *Human Rights Act 2019*). However, the rights to property and home will only be limited if the interference with property

or home is unlawful or arbitrary. That will be addressed below when considering the factors in section 13 of the *Human Rights Act 2019*.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with these human rights is reasonable and justified as follows:

- Nature of the human right – The ability to own and protect property underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom. For renters who wish to pay more in advance, their ability to secure housing may be at stake, which is essential to living a life with dignity.
- Purpose – The purpose of the amendments is to enhance protections for renters to ensure a more transparent and fair rental market. This also serves to protect and promote human rights related to access to housing in sections 16, 19, 24, 25, 26 and 29 of the *Human Rights Act 2019* (see pages 5 and 6 above). This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – By preventing the payment of more rent in advance, the amendments help to ensure a more transparent and fair rental market.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a more transparent and fair rental market. Currently, housing supply constraints and cost of living pressures have created severe housing affordability challenges, with very low vacancy rates and substantial increases in rent for rental properties. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – The amendments are necessary to ensure greater protections for renters in Queensland. The amendments adjust the balance of rights in the rental relationship given that some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs. Ultimately, the need for a stable, transparent and fair private rental market, outweighs the impacts on property owners as well as the impacts on some renters who are willing to pay more in advance.

As the interference with property and privacy is proportionate and not arbitrary, the rights to property and privacy not limited by this amendment. The limits on the freedom to choose where to live are justified. Accordingly, preventing the payment of more than 2 or 4 weeks rent, depending on the type of agreement, is compatible with human rights.

Payment of rental bond if QCAT dismisses application under section 136B (clause 22 of the Bill)

Where there is a disagreement about the payment of a rental bond, section 136A of the RTRA

Act provides for a conciliation process. If that is unsuccessful, under section 136B, an interested person may apply to QCAT for an order about the payment of the rental bond. Currently, under section 136E of the RTRA Act, if there are outstanding applications to the tribunal, the Residential Tenancies Authority (RTA) may only pay the rental bond if all the applications are withdrawn. This means that if QCAT does not make an order under section 136D of the RTRA Act, the bond cannot be released by the RTA to a party and will continue to be held by the Authority indefinitely.

Clause 22 of the Bill amends section 136E of the RTRA Act to allow the RTA to also make a payment of rental bond where all applications to QCAT are dismissed (for example, where a party does not attend a hearing).

By allowing the rental bond to be paid in circumstances where it would otherwise have been withheld, the amendment promotes the right to property of the person entitled to receive the rental bond.

It is considered that the right to property of the other party (whose application is dismissed) is not limited. Even if allowing the rental bond to be paid out in those circumstances amounts to a deprivation of property of the other party, it is considered that any such deprivation of property would not be arbitrary. Any payment would only occur after a dispute resolution process has occurred and only in the circumstance where the application is dismissed by QCAT and QCAT does not make an order under section 136D of the RTRA Act. An application would generally be dismissed by QCAT when a party does not attend a hearing. The amendment will also be supported by educational material, and the Residential Tenancies Authority will provide advice when engaging with parties to ensure parties are aware of the potential repercussion of not attending a hearing.

Payment to rental bond supplier (clause 23 of the Bill)

Clause 23 of the Bill amends section 138 of the RTRA Act, which provides for when a rental bond may be paid to a rental bond supplier. Currently, section 138 allows the RTA to pay the rental bond directly to a person if satisfied the person paid the rental bond direct to it as assistance to a contributor.

The policy intention of section 138 of the RTRA Act as originally enacted was to require the RTA to pay rental bonds back to the predecessor of the Department of Housing, Local Government, Planning and Public Works. It was not anticipated at that time that a market for commercial bond loans would emerge, resulting in the RTA being required to return bonds to commercial bond loan providers, without necessarily being aware of the terms of the commercial contract between the renter and the bond provider. This has resulted in renters not being able to access their rental bond money in a timely manner, affecting their ability to relocate and secure new accommodation.

The new section 138 would only allow the RTA to pay the rental bond to a rental bond supplier if it is the housing department. Where the contributor's part of the bond was provided by way of loan from the housing department and an amount of the loan is still owing, the Authority

must pay the outstanding amount from the rental bond to the housing department instead of the contributor.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

By removing the ability to pay a rental bond to a third party other than the housing department, clause 23 engages the right to property in section 24 of the *Human Rights Act 2019*. A rental bond supplier (other than the housing department) currently entitled to payment of the rental bond directly will no longer be entitled to direct payment following the amendment.

However, the right to property will only be limited if the property is deprived arbitrarily. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with the property of rental bond suppliers is reasonable and justified as follows:

- Purpose – The purpose of the amendment is to return section 138 of the RTRA Act to its original intention, which was to hold rental bonds on behalf of renters so that the amounts could be returned to them in a timely manner rather than waiting to be repaid by property owners. Ensuring section 138 operates in this way will assist renters in recovering their money quickly so that they can apply it to other purposes such as a new rental bond or relocation costs.
- Relationship between limitation and its purpose – By removing the obligation on the RTA to pay bonds to commercial loan providers, the limitation will facilitate the timely return of bonds to renters.
- Less restrictive alternatives – The purpose can only be achieved by removing the obligation to pay rental bonds to commercial bond providers. The option of having the amended section 138 apply only to rental bonds received by the Residential Tenancies Authorities after the amendments take effect was considered. However, that option would still leave a significant number of renters at risk of not recovering their bond money quickly at a time when they are most likely to need it to meet housing expenses.
- Fair balance – The amendments do not interfere with the contractual arrangements between renters and their commercial bond providers. If renters do not satisfy their repayment obligations, commercial bond providers can recover their money through the usual debt recovery mechanisms. The purpose of the Residential Tenancies Authorities holding rental bonds was to protect the rights of renters by reducing the risk of the return of bonds being unfairly delayed by rental property owners. The development of a commercial bond loan market meant that commercial providers obtained an unintended

benefit from the RTA's statutory bond holding responsibilities. The amendment strikes a fair balance and restores the original intention of the provision, namely to protect the rights of renters to timely return of bond monies.

Transfer of rental bond (clause 25 of the Bill)

Clause 25 of the Bill inserts new section 155A into the RTRA Act. New section 155A allows the Residential Tenancies Authority, in the circumstances to be prescribed by regulation, to transfer all or part of a rental bond to be used as the rental bond for another agreement. This will facilitate a portable bond scheme in Queensland to lessen the financial burden on renters when moving from one rental property to another, by allowing the transfer of the rental bond between rental properties. This will prevent renters from having to fund a second bond while awaiting the return of the bond from the previous property.

In this way, new section 155A protects and promotes human rights related to access to housing in sections 16, 19, 24, 25, 26 and 29 of the *Human Rights Act 2019* (see pages 5 and 6 above).

It is possible that regulations made under new section 155A will limit human rights. However, the regulation will need to be accompanied by a human rights certificate under section 41 of the *Human Rights Act 2019*, setting out whether, in the Minister's opinion, the regulation is compatible with human rights. That will help to ensure that any regulation made under new section 155A will only impose limits on human rights that are reasonable and demonstrably justifiable.

Fixtures and structural changes for safety, security or accessibility (clauses 26, 27, 32 and 33 of the Bill)

Clauses 26, 27, 32 and 33 of the Bill insert a new framework for renters and rental property owners to negotiate structural changes and the installation of fixtures at the rental property or rooming accommodation that are necessary for safety, security or accessibility. The amendments also update the existing general scheme for renters to request approval to make structural changes or install fixture (i.e. where the change or fixture is not needed for safety, security or accessibility).

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the right to property (section 24 of the *Human Rights Act 2019*) by allowing fixtures and structural changes to the property to be authorised.

However, the right to property will only be limited if the property is deprived arbitrarily. It is convenient to consider arbitrariness below when considering proportionality under section 13 of the *Human Rights Act 2019*.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to control one’s property and decide whether to agree to fixtures or structural changes without interference.
- Purpose – The purpose is to ensure rental properties are safe, secure and accessible. Ensuring safe and secure homes helps to protect human rights related to bodily integrity, including the right to life, the right to privacy and the right to security of the person (sections 16, 25(a) and 29(1) of the *Human Rights Act 2019*). Ensuring that homes are accessible promotes the right to equality and non-discrimination, as well as freedom of movement (sections 15 and 19 of the *Human Rights Act 2019*). These are proper purposes that are consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – Providing the power to make regulations about fixtures or structural changes will help to ensure rental properties are safe, secure and accessible.
- Less restrictive alternatives – Because the fixtures or structural changes must be ‘necessary’ for safety, security and accessibility, the impact on the property rights of rental property owners will be confined to what is necessary to achieve those purposes. Regulations may prescribe the circumstances in which attaching a fixture or making a structural change is necessary to achieve those purposes.
- Fair balance – On the one hand, the property rights of rental property owners to control what happens to their property is important. But, on the other hand, so too are the human rights of renters to live in accommodation that is safe, secure and accessible. Any regulation made under these new provisions will need to be accompanied by a human rights certificate under section 41 of the *Human Rights Act 2019*, setting out whether, in the Minister’s opinion, the regulation is compatible with human rights. That will help to ensure that any regulation made under new sections 209C and 256C will only impose limits on human rights that are reasonable and demonstrably justifiable. Ultimately, the new regulation-making powers strike a fair balance between the competing human rights at stake.

As the interference with property is proportionate and not arbitrary, the right is not limited by these amendments. Accordingly, these provisions are compatible with human rights.

Application to be sole tenant where injury to domestic associate (clause 28 of the Bill)

Clause 28 of the Bill amends section 245 of the RTRA Act to allow for a person to apply to QCAT for an order to be recognised as the sole tenant under a residential tenancy agreement because that person’s domestic associate has committed domestic violence against them. Currently, section 245 of the RTRA Act allows the person to apply to be the tenant (or cotenant) rather than the sole tenant. This clarifies that the domestic associate may be removed as a tenant.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

Allowing a person to apply to QCAT to be recognised as the sole tenant may potentially limit the following rights of the person no longer recognised as a tenant:

- the right to freedom of movement, including the freedom to choose where to live in section 19 of the *Human Rights Act 2019*;
- the right not to have one's property arbitrarily interfered with in section 24(2) of the *Human Rights Act 2019*;
- the right not to have one's privacy, family or home unlawfully or arbitrarily interfered with in section 25(a) of the *Human Rights Act 2019*;
- cultural rights generally (section 27 of the *Human Rights Act 2019*) and the cultural rights of Aboriginal peoples and Torres Strait Islander peoples (section 28 of the *Human Rights Act 2019*) where an established community is disrupted, limiting the ability to enjoy, maintain, control, protect and develop their kinship ties.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's home, family life and to live in one's property without interference.
- Purpose – The purpose is to facilitate the personal safety and security of those who have had domestic and family violence committed against them by their domestic associates. This is a legitimate aim that protects and promotes the human rights of people who experience domestic violence, including the right to life, the right not to be subject to degrading treatment, the right to privacy (which includes bodily integrity) and the right to security of the person (sections 16, 17(b), 25(a) and 29(1) of the *Human Rights Act 2019*). The State has a positive human rights obligation to take steps to combat domestic violence.¹² This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendment ensures there is a mechanism to protect the personal safety and security of individuals within their homes and is effective in achieving that objective.
- Less restrictive alternatives – Under section 245 of the RTRA Act, QCAT is to determine whether a tenant should be recognised as the sole tenant after a hearing. QCAT will need to consider human rights before making an order. With that important safeguard, there are no less restrictive alternatives that would achieve the objective.
- Fair balance – The amendment is necessary to ensure the safety and security of tenants in Queensland within their homes. The amendment strikes a fair balance,

¹² *Tunikova v Russia* (2022) 75 EHRR 1.

taking into account that QCAT will ultimately determine whether a tenant should be recognised as the sole tenant having regard to the domestic violence committed by their domestic associate.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by the amendment. The limits on the other human rights are justified. Accordingly, the amendment to section 245 of the RTRA Act is compatible with human rights.

Entry to install, maintain or replace smoke alarm (clause 34 of the Bill)

Clause 34 of the Bill amends section 259(1) of the RTRA Act to provide that a provider may enter a resident's room, at a reasonable time, to install, maintain or replace a smoke alarm.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The amendment represents an incursion on the resident's right to property (section 24 of the *Human Rights Act 2019*) and their right privacy and home (section 25(a) of the *Human Rights Act 2019*). Both rights protect peaceful enjoyment of one's home without interference.

However, the rights to property and privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary means capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any interference with property and privacy is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's private sphere without interference, to have a place to retreat from the world.
- Purpose – The purpose of allowing a provider to enter a resident's room to install, maintain or replace a smoke alarm is to help to ensure the safety of residents. That pursues the legitimate aim of protecting the right to life and other rights related to bodily integrity (sections 16, 25(a) and 29(1) of the *Human Rights Act 2019*). This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendment permits entry into a resident's room to ensure a working smoke alarm is installed and is effective. That helps to ensure fire safety.
- Less restrictive alternatives – The provision facilitates entry only after notice is given. This is an important safeguard. There are no less restrictive alternatives that

would achieve the objective.

- Fair balance – The amendments are necessary to protect the lives of residents. Impacts on the resident’s right to privacy are outweighed by the need to protect their life and physical safety.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by this amendment. Accordingly, the amendment is compatible with human rights.

Ending of residential tenancy agreement or rooming accommodation agreement by termination plan resolution for premises part of a community titles scheme (clauses 35 and 41 of the Bill)

Clauses 35 and 41 of the Bill amend sections 277 and 366 of the Act to insert a note to see the BCCM Act for the termination of a residential tenancy agreement if a community titles scheme is terminated.

Chapter 2, part 9, division 4 of the BCCM Act provides for the termination of community titles schemes and includes a process for the sale and termination of schemes, where there are economic reasons for termination. In summary, the division allows termination of an uneconomic community titles scheme with the approval of 75% of the owners of lots included in the scheme.

Part 3, division 1 of the Bill amends section 81V(1)(b) of the BCCM Act to clarify that the process for terminating community titles schemes applies to terminating rooming accommodation agreements in addition to residential tenancy agreements.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

Providing for an additional way that a residential tenancy agreement or rooming accommodation agreement may be terminated interferes with the right to property of rental property owners in section 24 of the *Human Rights Act 2019*, in particular the property rights of a minority of owners of lots in a community titles scheme who may be compelled to sell their lots as part of a collective sale, despite not supporting the sale and termination of the community titles scheme.

Likewise, providing for an additional way that a residential tenancy or rooming accommodation agreement may be terminated has the potential to interfere with the human rights of renters, in particular, renters who wish to continue residing in their home and do not support the termination of the community titles scheme. The human rights of renters that are impacted are:

- the freedom to choose where to live (section 19 of the *Human Rights Act 2019*);¹³

¹³ *Vanilla Rentals v Tenant* [2023] QCAT 519, [48].

- the right to property because rights under residential tenancies and rooming accommodation agreements are likely a form of property (section 24 of the *Human Rights Act 2019*);¹⁴
- the right to non-interference with privacy, family and home (section 25(a) of the *Human Rights Act 2019*); and
- Protection of families and the best interests of the child (section 26(1) and (2) of the *Human Rights Act 2019*).

Some of those human rights have internal limitations. The right to property will only be limited if the property is deprived arbitrarily. The right to privacy will only be limited where the interference with privacy, family or home is unlawful or arbitrary. In a human rights context, ‘arbitrary’ refers to conduct that is capricious, unreasonable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limits or interference with these human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake are the rights of both rental property owners and renters to benefit from their property and to enjoy peaceful possession of their home. The human rights related to housing are important because living precariously threatens the ability to live a life with dignity (see pages 5 and 6 above).
- Purpose – Clauses 35 and 41 of the Bill support amendments that have been made to the BCCM Act by the *Body Corporate and Community Management and Other Legislation Amendment Act 2023*. Consistent with those amendments, the purpose of clauses 35 and 41 is to ensure that the greater majority of owners of lots in a community titles scheme are not tied to potentially exorbitant and unsustainable costs associated with maintaining or repairing the scheme, or operating a non-viable commercial scheme, because a small number of owners refuse to sell their lots. While the reform will limit the human rights of some lot owners and renters in an uneconomic community titles scheme, it will promote the human rights of other owners in the scheme that wish to sell their lots as part of a collective sale. Because the BCCM Act allows ageing and rundown schemes to be terminated, a related purpose is to protect the safety of owners, occupiers and the broader community.
- Relationship between limitation and its purpose – The amendments help to achieve those purposes of chapter 2, part 9, division 4 of the BCCM Act.
- Less restrictive alternatives – There is no less restrictive alternative, taking into account the safeguards under the BCCM Act when a community titles scheme is

¹⁴ *Vanilla Rentals v Tenant* [2023] QCAT 519, [52]-[55].

terminated, including minimum compensation requirements and review rights for minority owners.

- Fair balance – Ultimately, it is considered that the rights of rental property owners and renters to continue to enjoy the benefits of their agreement are outweighed by the need to ensure that a residential tenancy agreement or rooming accommodation agreement cannot frustrate a community titles scheme being terminated for economic reasons to facilitate renewal and development of the lot.

As the interference with property and privacy is proportionate and not arbitrary, the rights to property and privacy not limited by this amendment. The limits on the other human rights are justified. Accordingly, the amendments to the RTRA Act to support chapter 2, part 9, division 4 of the BCCM Act are compatible with human rights.

Short tenancy for a moveable dwelling (clauses 36, 37, 39, 40, 48 and 49 of the Bill)

Currently, sections 47 and 48 of the RTRA Act allow parties to agree to a base period and extended period for a short tenancy over a moveable dwelling.

Clauses 36, 37, 39 and 40 of the Bill insert new sections 292, 307E, 326 and 327 into the RTRA Act to better regulate these short tenancies. A lessor may now give a tenant a notice to leave the premises, no later than two business days before the end of the base period or extended period. A tenant may now give a lessor a notice of intention to leave, no later than one business day before the end of the base period or extended period. The handover day stated in the notice must be the last day of either the base period or extended period.

Clause 48 inserts notice periods into schedule 1 of the RTRA Act for a notice to leave or a notice of intention to leave for a short tenancy (moveable dwelling). Clause 49 also inserts a new definition into the Dictionary of the Act for ‘end of short tenancy (moveable dwelling)’.

Human rights engaged (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The new sections providing for notice to leave or notice of intention to leave do not change the rights of lessors and tenants. A short tenancy (moveable dwelling) can only be extended in the base period and only once. However, allowing notices to be given provides greater certainty to the tenant (in relation to their home) as well as greater certainty to the lessor (in relation to how they deal with their property). The notice provisions also mean that the lessor may apply under sections 293 or 294 of the RTRA Act for a termination order in the event that the notice to leave or notice of intention to leave is not complied with. Again, the availability of this mechanism provides greater certainty to lessors and tenants without changing their underlying rights.

Accordingly, clauses 36, 37, 39 and 40 of the Bill promote the right to property and the right to privacy, family and home.

Confidentiality of information in relation to a notice ending tenancy interest (clauses 38 and 43 of the Bill)

Currently, the RTRA Act protects the confidentiality of evidence supporting a notice ending a tenancy interest for a victim of domestic violence who exercises their right to leave. The disclosure of this evidence is restricted.

Clause 38 of the Bill expands the scope of section 308I of the RTRA Act to protect ‘relevant information’ rather than only evidence supporting a notice. ‘Relevant information’ will include personal information about the tenant who gave the notice as well as the evidence supporting the notice. Clause 43 of the Bill amends section 381I of the RTRA Act to introduce an equivalent provision in respect of rooming accommodation agreements. Disclosure of the personal information is an offence.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments limit freedom of expression in section 21 of the *Human Rights Act 2019* by restricting the disclosure of relevant information.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the right to freedom of expression is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to impart information and ideas of all kinds.
- Purpose – The purpose of the amendment is to promote the privacy of victims of domestic violence. The promotion of the right to privacy (section 25(a) of the *Human Rights Act 2019*) is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom. Protecting the privacy of people who are experiencing domestic violence in turn helps to protect their safety, and related human rights to life, protection of families and children, and security of the person (sections 16, 26 and 29(1) of the *Human Rights Act 2019*).
- Relationship between limitation and its purpose – The amendments ensure the privacy of renters who wish to exercise their right to leave are protected and achieves its purpose.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of protecting the renter’s right to privacy. Sections 308I and 381I of the RTRA Act will continue to permit disclosure of the confidential information in particular situations such as where the disclosure is required by law. Given the impacts on the right to freedom of expression are narrowly tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The amendments are necessary to ensure the privacy of victims of domestic violence is protected (as well as their other human rights related to physical safety). A fair balance is struck. Ultimately, the need to protect the renter’s right to

privacy outweighs the impacts on freedom of expression.

The limit on the freedom of expression is proportionate and therefore justified. Accordingly, clauses 38 and 43 of the Bill are compatible with human rights.

Reasonable efforts to contact former resident about lost property (clause 44 of the Bill)

Clause 44 of the Bill amends section 393 of the RTRA Act to outline what may be regarded as reasonable in making reasonable efforts to contact a former rooming accommodation resident about lost property. Reasonable efforts include efforts to contact via modern communication, such as text message, email, private message on a social media platform, emergency contact listed in the rooming accommodation agreement and a notice in an online newspaper.

Where reasonable efforts are made, and the property is not reclaimed at the end of 28 days, the property is now able to be sold or disposed of, without necessarily having first advertised in a newspaper as is currently required.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The effect of the amendment is that a person's property—including their personal belongings—may be sold and disposed of without first taking the step of advertising in a newspaper. That is, a person may be deprived of their belongings in circumstances where they would not currently. That may amount to a deprivation of property under section 24(2) of the *Human Rights Act 2019*.

However, the right to property will only be limited if the property is deprived arbitrarily. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any deprivation of property is reasonable and justified as follows:

- Nature of the human right – The values underlying the right to property are the need to ensure that human beings can supply themselves with food and otherwise support themselves. The right is thought to be a strategic human right, a right that protects other rights but also valuable in itself as a component of human dignity. Personal property is at the core of the right as it lies closer to the core of human dignity.¹⁵
- Purpose – The purpose of removing the requirement to advise in a hardcopy newspaper is to better reflect the way people seek and receive information in the modern era. Specifying that reasonable efforts include efforts to contact via text message, email, social media and online newspapers promotes the right in section 21

¹⁵ *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, [331].

of the *Human Rights Act 2019* to seek, receive and impart information by any medium chosen by the person. That is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.

- Relationship between limitation and its purpose – The amendment helps to ensure that a provider is not required to use a medium that may not actually bring the matter to the former resident’s attention, and instead requires only that reasonable efforts are made to contact the former resident or their emergency contact, through whatever medium is reasonable in the circumstances.
- Less restrictive alternatives – The power to deal with property under section 393 will still only apply to lost property that is not a personal document or money. Where the lost property is not perishable, below a prescribed market value and not unhealthy or unsafe to store, the provider is still required to make reasonable efforts to contact the former resident before dealing with the property.
- Fair balance – By specifying more modern means of communication for making reasonable efforts to contact the former resident, the amendment may reduce the chances that their property will be sold or disposed of without their knowledge. Ultimately, the need to update the means by which the matter may be brought to the former resident’s attention outweighs the small impact on their property.

As the interference with property is proportionate and not arbitrary, the right to property is not limited by this amendment.

Code of conduct (clause 45 of the Bill)

Clause 45 of the Bill inserts a new section 519A into the RTRA Act. The new section will allow for a code of conduct to be prescribed by regulation, applying to all parties within the rental sector. The regulation may prescribe penalties of up to 50 penalty units for non-compliance with a conduct provision of the code.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

Regulating a profession (such as property managers) through a Code of Conduct may impact on rights related to the ability to practise one’s profession. In some cases, a person’s profession may be a form of property protected by section 24 of the *Human Rights Act 2019*.¹⁶ Further, the right to privacy in section 25(a) of the *Human Rights Act 2019* may extend to protect a person’s ability to work in their chosen profession. This is because the right to privacy encompasses an individual’s right to establish and develop meaningful social relations, including professional relations.¹⁷ The property rights of rental property owners may also be limited, because the Code may restrict the degree of control over their investment properties by prescribing certain requirements that must be complied with when managing tenancies.

¹⁶ *Van Marle v The Netherlands* (1986) 8 EHRR 483; [1986] ECHR 6, [41].

¹⁷ *Denisov v Ukraine* [2018] ECHR 1061, [100].

Additionally, the Code may impact on the right to freedom of expression under section 21 of the *Human Rights Act 2019* if the Code places limits on the way parties communicate with each other during the term of the agreement.

However, the rights to property, privacy and expression will only be limited if the interference is unlawful or arbitrary. It is convenient to consider that question below when considering proportionality under section 13 of the *Human Rights Act 2019*.

It is also possible that a Code of Conduct prescribed under new section 519A will limit other human rights.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with property and privacy (and possibly other human rights) is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability of property managers to practise their profession free from interference.
- Purpose – The purpose of new section 519A of the RTRA Act is to allow for clear expectations to be set through a rental sector Code of Conduct to foster appropriate and professional practices in Queensland’s rental market. Protecting consumers is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.¹⁸
- Relationship between limitation and its purpose – Inserting section 519A will allow for a Code of Conduct to be prescribed, which will help to achieve those purposes.
- Less restrictive alternatives – Consideration was given to assist the real estate industry to self-regulate by endorsing conduct standards developed and administered by an industry body. Currently, the Real Estate Institute of Queensland provides best practice guidelines that set out certain conduct standards, but the guidelines only apply to members of the Institute. This option was decided against because a self-regulation model would not capture all parties to rental agreements, and because there is a need for an enforceable Code that protects all parties from undesirable and unprofessional practices.
- Fair balance – On the one hand, it is important to preserve the rights to property, privacy and expression for parties to a rental agreement. But, on the other hand, so too is need to ensure appropriate standards in the rental market. Ultimately, the new regulation-making powers strike a fair balance.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited. Accordingly, clause 45 of the Bill is compatible with human rights.

¹⁸ *Van Marle v The Netherlands* (1986) 8 EHRR 483; [1986] ECHR 6, [43].

Retrospective transitional regulations (clause 85 of the Bill)

Clause 85 of the Bill inserts a new section 588 into the RTRA Act allowing for transitional regulations to be made. Section 588(2) provides that a transitional regulation may have retrospective operation to a day that is not earlier than the day the section commences.

It is possible that transitional regulations made under new section 588 will limit human rights. For example, the transitional regulation may create an offence for the purposes of a transitional matter (in accordance with section 27 of the *Statutory Instruments Act 1992*), and that offence may operate retrospectively to a day that is not earlier than the day section 588 commences (in accordance with section 588(2)). That would limit the right not to be subject to retrospective criminal laws in section 35 of the *Human Rights Act 2019*. Other human rights may also be limited by transitional regulations.

However, transitional regulations will need to be accompanied by a human rights certificate under section 41 of the *Human Rights Act 2019*, setting out whether, in the Minister's opinion, the regulation is compatible with human rights. That will help to ensure that any transitional regulations made under new section 588 of the RTRA Act will only impose limits on human rights that are reasonable and demonstrably justifiable.

Residential tenancy and rooming accommodation applications (clauses 50 and 51 of the Bill)

Clauses 50 and 51 of the Bill insert new sections 57B to 57D and 76C to 76E into the RTRA Act.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

New sections 57B and 76C set out the information that may be requested in a residential tenancy or rooming accommodation application. The information includes certain personal information, such as the applicant's name, employment and income. By allowing this information to be requested, sections 57B and 76C interfere with privacy in section 25(a) of the *Human Rights Act 2019*.

However, the right to privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

These provisions also set out the manner in which applications are to be submitted, using an approved form. By regulating the means by which an application may be made, sections 57B and 57C also limit the right to freedom of expression in section 21 of the *Human Rights Act 2019*, because they interfere with the freedom to seek and receive information through any medium chosen by the person.

New sections 57B and 76C also provide that the approved form must set out information about unlawful discrimination. Requiring that information to be included helps to inform renters about their rights, and serves to protect rights to non-discrimination in section 15 of the *Human Rights Act 2019*.

New sections 57C and 76D then provide that a rental property owner or their agent may request only the personal information allowed under sections 57B and 76C and certain other information. Requesting further information is an offence. By preventing certain information from being requested, sections 57C and 76D limit the freedom to seek and receive information under section 21 of the *Human Rights Act 2019*.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – For the impacts on privacy, what is at stake in human rights terms is the ability to decline to provide information and to keep private matters private. For the impacts on freedom of expression, what is at stake is the ability to seek and receive information and ideas of all kinds in the way one wishes.
- Purpose – The purpose of allowing certain private information to be collected is to allow rental property owners and their agents to obtain the information they need to decide applications for residential tenancies and rooming accommodation agreements. That serves to promote freedom of expression in section 21 of the *Human Rights Act 2019*. On the other hand, the purpose of preventing rental property owners and their agents from seeking further information is to protect the privacy of residential tenancy and rooming accommodation applicants. In turn, that serves to protect the right to privacy in section 25(a) of the *Human Rights Act 2019*. Protecting human rights is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments help to ensure rental property owners and their agents receive the information they need, but no further private information.
- Less restrictive alternatives – The amendments are necessary to achieve their objectives. The provisions will require rental property owners and their agents to only collect information that is necessary. Inappropriate information concerning prior legal action, rental bond history or financial statements showing transactions must not be requested. If a renter elects to allow a rental property owner access to a document to verify the renter’s identity, the property owner may only retain a copy with the renter’s consent. Retaining a copy without consent is an offence. The impacts on freedom of expression and the right to privacy are therefore narrowly tailored to what is reasonably necessary. There are no less restrictive alternatives that would achieve the objective.
- Fair balance – The amendments strike an appropriate balance between the freedom

of rental property owners and their agents to seek and receive information, on the one hand, and the right of prospective renters to keep the private information to themselves.

The interference with privacy is proportionate and therefore not arbitrary, such that the right to privacy is not limited. The limit on freedom of expression is proportionate and therefore justified. Accordingly, these provisions are compatible with human rights.

Payment of rent (clauses 52 and 53 of the Bill)

Clause 52 of the Bill replaces sections 83 and 84 and inserts new sections 84A and 84B into the RTRA Act to regulate the payment of rent in residential tenancies. Clause 53 replaces sections 98 and 99 and inserts new sections 99A and 99B to regulate the payment of rent in rooming accommodation.

The amendments will ensure flexibility in how rent is paid and ensure that the method of payment stated in the agreement is reasonably available to the renter. Renters will also be required to be given a fee-free method of paying rent. It will be an offence to fail to advise renters of both the costs of certain payment methods and the benefits that rental property owners or their agents may receive. However, rental property owners and their agents will not be required to disclose costs that the renter would reasonably be aware of or could reasonably be expected to find out.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

Giving renters more options about how to pay rent results in an equivalent loss of control by rental property owners and their agents over how they receive rent. Arguably, that may engage the right to property in section 24 of the *Human Rights Act 2019*, on the basis that a normal incident of property is that an owner is entitled to receive payment in the way they wish in exchange for granting possession of the property.

The requirement to disclose the costs and benefits of certain payment methods may also limit the right to privacy in section 25(a) of the *Human Rights Act 2019*, as well as the freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).¹⁹

However, the rights to property and privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether

¹⁹ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to control how a person receives rent as consideration for possession of their property, as well as the ability to keep information to oneself.
- Purpose – Through consultation, renters and advocates shared their concerns that some rental property owners and property managers only offer rent payment methods that incur fees, such as rent payment cards, third party platforms, cheque or money order. These fees and penalties on top of rent can create additional financial stress for renters. These amendments are designed to create a rental environment where renters are protected from unreasonable fees and charges, and give renters a choice in how they pay rent so that they can avoid incurring additional costs when paying rent. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments give renters more options in how to pay rent, and also require rental property owners or their agents to disclose the costs of certain payment methods and the financial benefits they may receive. These measures ensure the objective is achieved.
- Less restrictive alternatives – The amendments are necessary to achieve a fairer rental market. Renters can only be given greater choice over how they pay rent by reducing the control that rental property owners and their agents have over how they receive rent. Property owners and their agents will not be required to disclose costs that the renter would reasonably be aware of or could reasonably be expected to find out. This ensures that the obligation to disclose costs is not unduly oppressive. Given the impacts on the rights to freedom of expression, property and privacy are tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The amendments are necessary to ensure greater protections for renters in Queensland. The amendments adjust the balance of rights in the rental relationship given that some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs. Ultimately, the need for a fair private rental market, outweighs the impacts on freedom of expression, property and privacy.

As the interference with property and privacy is proportionate and not arbitrary, those rights are not limited by these amendments. Any limits on the freedom of expression are proportionate and therefore justified. Accordingly, these provisions are compatible with human rights.

Evidence for rental bond claim (clause 54 of the Bill)

Clause 54 of the Bill inserts new section 136AA into the RTRA Act to improve the rental bond process by requiring any bond claims by a rental property owner to be substantiated by

providing the renter with evidence supporting the claim, such as receipts, repair quotes or records of unpaid rent. The evidence is to be provided within 14 days of making the bond claim unless the renter is not contactable after making reasonable efforts. Failure to comply is an offence. The onus to prove a rental bond claim is placed on rental property owners and their agents, rather than requiring renters to disprove the rental bond claim.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The requirement to provide evidence may potentially limit the right to privacy in section 25(a) of the *Human Rights Act 2019*, and the freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).²⁰

However, the right to privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to keep information to oneself.
- Purpose – The purpose of the amendments is to enhance protections for renters to ensure a fairer rental bond process. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments require bond claims to be substantiated and require evidence to be provided within a particular timeframe. These provisions ensure the objective is achieved.
- Less restrictive alternatives – The amendments are necessary to achieve the objective of a fairer rental bond process. However, property owners and their agents will not be required to comply with the 14-day timeframe where the renter is not contactable after making reasonable efforts. Given the impacts on the right to freedom of expression and privacy are tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The amendments are necessary to ensure greater protections for renters in Queensland. The amendments adjust the balance of rights in the rental relationship given that some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs.

²⁰ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

Ultimately, the need for a fairer rental bond process outweighs the impacts on freedom of expression and privacy.

As the interference with privacy is proportionate and not arbitrary, the right is not limited by these amendments. Any limits on the freedom of expression are proportionate and therefore justified. Accordingly, clause 54 of the Bill is compatible with human rights.

Payments of rental bond above maximum amount (clause 55)

Clause 55 of the Bill amends section 146 of the RTRA Act to remove the weekly rent threshold above which the bond the renter must pay is not limited. Instead, all residential tenancy agreements and rooming accommodation agreements will be subject to a maximum rental bond that may be requested or accepted.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The amendment removes the ability of rental property owners to require or accept a higher rental bond for agreements over the weekly rent threshold. This potentially limits the right to property (section 24 of the *Human Rights Act 2019*) by restricting the manner in which a person may deal with, and benefit from, their investment property.

However, the right to property will only be limited if the property is deprived arbitrarily. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to enjoy one's property free from interference.
- Purpose – The purpose of the amendment is to improve affordability of rental bonds for renters and limit excessive rental bond charges, while ensuring that property owners continue to have confidence to maintain rental supply. Ensuring a fairer rental market also serves to protect and promote human rights related to access to housing in sections 16, 19, 24, 25, 26 and 29 of the *Human Rights Act 2019* (see pages 5 and 6 above). These are proper purposes that are consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendment helps to limit excessive rental bond charges by ensuring all residential tenancy agreements and rooming accommodation agreements are subject to a maximum rental bond that may be requested or accepted.

- Less restrictive alternatives – The amendment is necessary to achieve the objective of a fairer rental market. The only alternative is to retain the existing weekly rent threshold, which would not help to limit excessive rental bond charges.
- Fair balance – Removing the weekly rent threshold is necessary to ensure a fairer rental market. Ultimately, the need to limit excessive rental bond charges outweighs the impacts on the right to property of rental property owners.

As the interference with property is proportionate and not arbitrary, the right to property is not limited. Accordingly, clause 55 of the Bill is compatible with human rights.

Service charges (clauses 56 to 59 of the Bill)

Clauses 56 to 58 of the Bill amend sections 165 to 167 of the RTRA Act to require that tenants be provided with a copy of documents outlining utility charges for general services and water services promptly. Clause 59 amends section 170 to introduce a similar requirement for rooming accommodation residents in relation to utility charges.

The property owner must give the renter a copy of the documents for service charges within 4 weeks. Renters who do not receive a copy of the documents within this timeframe are not required to pay the service charges.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The requirement to provide a copy of documents may potentially limit the right to privacy in section 25(a) of the *Human Rights Act 2019*, and the freedom of expression in section 21 (which may include the right to say nothing or the right not to say certain things).²¹ Providing that renters are not required to pay service charges if they do not receive the documents in time may also deprive rental property owners of property for the purposes of the right to property in section 24 of the *Human Rights Act 2019*, because they will be required to pay.

However, the rights to property and privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to keep information to oneself and to enjoy one's property.

²¹ *Slaight Communications Inc v Davidson* [1989] 1 SCR 1038, 1080.

- Purpose – The amendments prescribe a timeframe in which a property owner must pass on service charges to the renter that the renter is responsible for paying. The timeliness of property owners passing on service charges was identified as an issue, particularly when accumulated bills were passed onto the renter at the end of the tenancy. This adds to the financial burden on renters as it does not allow them to plan for and budget incoming bills and costs, or to monitor usage. Overall, the purpose of the amendments is to enhance protections for renters to ensure a fairer rental market. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments require documents outlining service charges to be passed on to renters promptly. This ensures that outstanding accumulated accounts do not place a financial burden on renters. These provisions help to ensure fairness.
- Less restrictive alternatives – The department considered whether the policy objective could be achieved without mandating that renters be provided with the relevant document and instead undertaking an educational campaign to educate rental property owners about best practice approaches for transparency and passing on costs to renters. However, while an educational campaign might reduce the number of renters having to pay significant sums of money at the end of their tenancy, there would be a continuing risk that some property owners would continue the practice and that the proposed amendment was necessary to achieve the objective. Accordingly, the amendments represent the least restrictive way to achieve the objective.
- Fair balance – The need to ensure renters are promptly informed of service charges they are responsible for paying and to protect them from accumulated bills outweighs the impacts on the rights of rental property owners to property, privacy and freedom of expression.

As the interference with property and privacy is proportionate and not arbitrary, the rights to property and privacy are not limited by these amendments. Any limits on the freedom of expression are proportionate and therefore justified. Accordingly, these provisions are compatible with human rights.

Entry of premises (clauses 62, 63, 69 and 70 of the Bill)

Clauses 62 and 69 of the Bill amend sections 193 and 259 of the RTRA Act to extend the notice period for entry other than for general inspections, safety checks and in an emergency, from 24 to 48 hours for residential tenancies and rooming accommodation.

Clauses 63 and 70 of the Bill insert new sections 195A and 259A into the RTRA Act to restrict the number of entries where a notice to leave or notice of intention to leave has been given in both residential tenancies and rooming accommodation.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the right to property (section 24 of the *Human Rights Act 2019*) by restricting the manner in which a person controls and manages their property.

However, the right to property will only be limited if the property is deprived arbitrarily. In a human rights context, arbitrary refers to conduct that is capricious, unreasonable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the above human rights is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to deal with one’s property free from arbitrary interference.
- Purpose – The purpose of the amendments is to ensure that renters are given adequate notice of a proposed entry to their living space and have time to prepare for the entry. In the case of renters who will be leaving the premises, the amendments ensure that their privacy and enjoyment of their home and family life is not continually interrupted by the rental property owner or their agent bringing prospective renters to view the premises, as well as other non-essential types of entries. These are proper purposes consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – By extending the required notice period and limiting the number of times a property owner or their agent can enter premises that are being vacated, renters will have greater time to prepare before their homes are subject to entry and will not be interrupted multiple times after they have decided, or been given notice, to leave. Sections 193 and 259 and new sections 195A and 259A are part of the ‘rules of entry’ under the RTRA Act, contravention of which is an offence under section 202.
- Less restrictive alternatives – Presently, ss 193 and 259 allow renters only 24 hours to prepare for entry and (subject to the notice requirements) there are no restrictions on the right of rental property owners or their agent to enter premises once it has been determined the renter is departing. The extension of the notice requirement by a further 24 hours still allows rental property owners and their agents to enter premises promptly (and they retain the ability to do so without notice in emergencies) and under new sections 195A and 259A, property owners and their agent will still be able to enter twice weekly and show the premises to prospective renters or purchasers. Given the impacts on the right to property are tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The amendments will enhance the ability of renters to enjoy their

privacy, home and family rights without severely restricting the rights of property owners to deal with their property. Some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs. The amendments strike a fair balance between the rights and interests of renters on one hand and property owners on the other.

As the interference with property is proportionate and not arbitrary, the right is not limited by these amendments. Accordingly, these provisions are compatible with human rights.

Fixtures and structural changes (clauses 64, 65, 67 and 68 of the Bill)

Clause 64 of the Bill replaces sections 207 to 209 and inserts new sections 207 to 208B into the RTRA Act to clarify the process for lessors and tenants to agree to attach fixtures or make other structural changes in residential tenancies. Clause 67 inserts new sections 254 to 256 making similar provision for providers in rooming accommodation.

Clause 65 also introduces new section 209C to allow QCAT to determine whether a fixture or structural change should be ordered where there is disagreement. Clause 68 of the Bill inserts new section 256AB into the RTRA Act to make similar provision for providers in rooming accommodation.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the right to property (section 24 of the *Human Rights Act 2019*) by restricting the manner in which a person controls or manages their property.

However, the right to property will only be limited if the property is deprived arbitrarily. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any interference with property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to control and manage with one's property free from arbitrary interference.
- Purpose – The purpose is to adjust the balance of rights in the rental relationship given that some of the most vulnerable Queenslanders, including people experiencing domestic and family violence and people with disability, rely on the private rental market for sustainable and long-term housing that meets their needs. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.

- Relationship between limitation and its purpose – The amendments clarify the process to negotiate changes to rental properties. They also limit the ability of rental property owners to refuse requested changes that affect only common property subject to an exclusive use by-law for a community titles scheme and give renters the ability to apply to QCAT if the property owner does not approve requests. They are therefore effective in shifting the balance in favour of renters.
- Less restrictive alternatives – Under the existing provisions of the RTRA Act, rental property owners are not required to respond to requests to attach fixtures or make structural changes. The new provisions require property owners to give a decision to most requests within 28 days, or a longer time agreed by the parties. Given that some tenancies are of quite short duration, the 28-day timeframe is reasonable to ensure renters receive an answer in a timely fashion. The amendments also provide for QCAT to determine whether there should be a change to the rental property after a hearing if there is still disagreement. This is an important safeguard. Without these changes, there would be no incentive for property owners to respond to reasonable requests in a timely manner.
- Fair balance – The amendments are necessary to adjust the balance of rights in the rental relationship. The amendments ensure there is a process to agree to changes to a rental property that would assist in meeting the occupant’s needs. Some of the most vulnerable Queenslanders, rely on the private rental market for sustainable and long-term housing that meets their needs. Ultimately, the need to adjust the balance of rights ensure those most vulnerable are accommodated, outweighs the impacts on the ability to deal with one’s property. A fair balance is struck.

As the interference with property is proportionate and not arbitrary, the right is not limited by these amendments. Accordingly, these provisions are compatible with human rights.

Reletting costs (clauses 60, 61 and 72, 73, 75 and 76 of the Bill)

Clauses 60, 61, 72 and 73, 75 and 76 of the Bill amend sections 173, 178, 357A, 396A, 420 and 421 of the RTRA Act to limit reletting costs that the renter may be liable for in residential tenancies and rooming accommodation. Currently, reletting costs that may be recovered are not capped. The amount of reletting costs able to be claimed will now be prescribed. The prescribed amount will vary according to the proportion of a fixed term lease or agreement has expired.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit the right to property (section 24 of the *Human Rights Act 2019*) by restricting the amount of costs a rental property owner can recover from a renter in connection with reletting the premises or room. The definition of ‘property’ in the *Acts Interpretation Act 1954* includes ‘money’.

However, the right to property will only be limited if the property is deprived arbitrarily. In a human rights context, arbitrary refers to conduct that is capricious, unpredictable or unjust, and also refers to interferences which are unreasonable in the sense of not being proportionate to a

legitimate aim sought. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

However, any limit on the right to property is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is to not be arbitrarily deprived of property.
- Purpose – The purpose is to adjust the balance of rights in the rental relationship to ensure a fairer rental market. Reletting costs need to be fair and reasonable and not prevent renters from accessing more suitable or affordable housing if they need to end a tenancy or accommodation agreement early. This is a proper purpose that is consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – The amendments cap the amount of reletting costs that are able to be recovered to ensure reletting costs are fair and reasonable. The provision is effective at achieving the objective.
- Less restrictive alternatives – Consideration was given to an alternative proposal of capping reletting costs at the lesser of the amount of reasonable reletting costs as currently provided for in the RTRA Act or amount determined by the remaining term of the tenancy. A further alternative considered was consultation and education within the residential rental sector to increase awareness of the costs renters incur as part of tenancies and best practices for transparency and passing on of these costs. However, none of the alternative approaches considered would have ensured renters could be certain about the total amount they would owe if they broke their lease.
- Fair balance – The benefits of removing renters’ uncertainty about their financial liability in the event they break their lease outweigh the impact on property rights and the limitation is therefore reasonable and demonstrably justifiable.

As the interference with property is proportionate and not arbitrary, the right is not limited by these amendments. Accordingly, these provisions are compatible with human rights.

Information about renters (clauses 79 and 80 of the Bill)

The Bill introduces provisions that will ensure the personal information of rental applicants are protected, as well as the personal information of renters. Clause 79 of the Bill amends section 457 of the RTRA Act to broaden the definition of personal information to ensure it is consistent with the meaning provided in the *Privacy Act 1988* (Cth) and has also been defined to include photographs or images of personal possessions or standard of living. Clause 80 of the Bill inserts new sections 457C to 457E of the RTRA Act to regulate the collection, secure storage and appropriate disposal of personal information. Non-compliance is an offence.

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

These amendments may potentially limit freedom of expression in section 21 of the *Human Rights Act 2019*. Restricting the personal information that is collected limits the freedom to seek and receive information. Restricting the manner in which personal information is stored, accessed and disposed of interferes with the ability to impart information.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the right to freedom of expression is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the ability to seek, receive and impart information.
- Purpose – The purpose of the amendment is to promote the privacy of applicants and renters and to ensure their personal information is not misused or mishandled. The promotion of the right to privacy (section 25(a) of the *Human Rights Act 2019*) is a proper purpose consistent with a free and democratic society based on human dignity, equality and freedom.
- Relationship between limitation and its purpose – Non-compliance with the collection, access, storage and disposal requirements of personal information is an offence and the provisions ensure the right to privacy is protected.
- Less restrictive alternatives – Consideration was given to an alternative proposal whereby renters could consent to their personal information being stored for a longer period of time, however this would negate the purpose of protecting the right to privacy. Given the impacts on the right to freedom of expression is tailored to what is reasonably necessary, the amendments are the least restrictive way to achieve the objective.
- Fair balance – The amendments are necessary to ensure the privacy of applicants and renters both when applying for a rental property and during the tenancy or accommodation agreement. A fair balance is struck. Ultimately, the need to protect the renter's right to privacy, outweighs the impacts on freedom of expression.

Any limits on the freedom of expression are proportionate and therefore justified. Accordingly, these provisions are compatible with human rights.

Confidentiality (clause 84 of the Bill)

Clause 84 of the Bill amends section 527 of the RTRA Act to broaden when confidential information provided by RTA clients may be recorded or disclosed.

Presently, section 527 authorises RTA executives and officers are prohibited from making records of confidential information or disclosing it other than:

- for a purpose under the RTRA Act;

- with the consent of the person to whom the information relates;
- in compliance with lawful process; or
- as expressly permitted or required under another Act.

As amended by the Bill, section 527 will continue to permit record-keeping and disclosure in these situations but will also authorise those activities:

- if the information is required to support the administration of the *Property Occupations Act 2014* or the *Agents Financial Administration Act 2014*;
- if the information is required for administering, receiving, holding or paying rental bonds;
- if the person reasonably considers it is necessary to prevent a serious risk to public safety; or
- if the person is required or authorised under a law (as compared with being expressly permitted or required under an Act).

Human rights potentially limited (part 2, divisions 2 and 3 *Human Rights Act 2019*)

The amended section 527 potentially limits the right in section 25(a) of the *Human Rights Act 2019* not to have one's privacy, family, home or correspondence unlawfully or arbitrarily interfered with.

However, the right privacy will only be limited where the interference is unlawful or arbitrary. Because the Bill authorises any interference, any interference would be lawful. In a human rights context, arbitrary refers to conduct that is capricious, unjust, unreasonable or disproportionate. If an interference is proportionate under section 13 of the *Human Rights Act 2019*, it will not be arbitrary. Accordingly, whether the interference with property or privacy is arbitrary will be addressed below when considering the factors in section 13.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Any limit on the right to privacy is reasonable and justified as follows:

- Nature of the human right – What is at stake in human rights terms is the right of individuals to protect their privacy.
- Purpose – The purpose of the amendment is to ensure that the RTA can record and disclose information acquired in the course of administering the RTRA Act in appropriate circumstances. This will reduce the risk of the RTA being impeded in performing its functions under the RTRA Act because of unduly strict confidentiality provisions. It will also allow information about the conduct of real estate agents, including their financial management, to be disclosed to the authorities responsible for regulating the industry. A further purpose of the amendment is enable the

department to administer bond loans.

- Relationship between limitation and its purpose – The amendments will allow the RTA greater freedom to impart information and the limitation will therefore be effective to achieve its purpose.
- Less restrictive alternatives – Retaining the existing arrangements under section 527 of the RTRA Act was considered. However, those arrangements create an administrative burden for the RTA and cause slower processing and longer wait times for bond loans. They also limit the ability of the department and the Office of Fair Trading to cooperate in investigation and enforcement matters.
- Fair balance – The amended provision still provides strong protection individuals' confidential information but removes practical impediments to the RTA fulfilling its statutory functions, protecting safety and ensuring that information about the conduct of real estate agents is shared with appropriate regulatory authorities and that the department can effectively administer bond loans. In the circumstances, the amendments strike a fair balance between the right to privacy and the objectives sought to be achieved.

Any limits on the right to privacy are proportionate and therefore justified. Accordingly, clause 84 and the amended section 527 of the RTRA Act are compatible with human rights.

CPD for property agents

In my opinion, the human rights that are relevant to the CPD amendments are:

- Property rights (section 24 of the Human Rights Act)
- Privacy and reputation (section 25 of the Human Rights Act); and
- Fair hearing (section 31 of the Human Rights Act).

Property rights (section 24 of the Human Rights Act)

Clauses 112, 118 and 119 of the Bill may impact on a person's property rights by depriving a person of property by potentially requiring them to pay a penalty for failure to keep a record of completed CPD requirements for a specified period and failing to keep specified information about another person confidential.

Clauses 112 and 118 insert new sections 92C and 151C (Record of completed CPD requirements) respectively, requiring both licensees and real estate salespeople to keep a record of the CPD requirements completed by the person, and for the record to be kept for 5 years after the end of the relevant CPD year to which the record relates. The Bill provides for a maximum penalty of 10 penalty units in relation to a breach of each of the two elements in these two new provisions.

The penalties provided in the Bill are aimed at achieving consistency in approach with other similar and relatively minor obligations. The maximum penalty imposed for similar obligations in the *Property Occupations Regulation 2014* is 10 penalty units (refer Part 3 General provisions about licensees or real estate salespersons and Part 4 Keeping of documents).

Clause 119 inserts new section 229B (Confidentiality) which requires a person who is or has been a public service employee performing functions under or relating to the administration of the Property Occupations Act to keep specified information about another person confidential, other than under prescribed circumstances. The Bill provides for a maximum penalty of 35 penalty units in relation to a breach of this new provision.

The penalty provided in the Bill is aimed at achieving consistency in approach with similar provisions in other fair trading legislation, namely – the *Motor Dealers and Chattel Auctioneers Act 2014* (section 230B), *Second-hand Dealers and Pawnbrokers Act 2003* (section 112), *Security Providers Act 1993* (section 48A) and *Tattoo Industry Act 2013* (section 62).

Privacy and reputation (section 25 of the Human Rights Act)

Clauses 97, 108, 110, 112, 114, 116, and 118 and new section 229C (Exchange of information) inserted by Clause 119 may impact on a person's right to privacy and reputation regarding personal information that may be obtained, recorded, and stored by the Office of Fair Trading (OFT) as part of the new CPD scheme's licence and certificate registration renewal and restoration processes.

Property agents who seek to be excused from undertaking CPD for a particular period on the basis of 'exceptional circumstances' may be required to explain any exceptional circumstances that might exempt them from the annual CPD requirements as part of renewing or restoring their licence or registration certificate.

Property agents may be required to provide documents and other information to OFT inspectors if requested to do so, as evidence of meeting the exceptional circumstance criteria.

In addition, property agents will be required to maintain records of training they have undertaken, for a minimum of 5 years, and may be required to make that information available to OFT for compliance and enforcement purposes. Relevant documentation may include personal information.

The Bill contains provisions to appropriately protect the confidentiality of information obtained in the administration of the Property Occupations Act, including in relation to the administration of the CPD requirements, and to enable information exchange with relevant agencies such as the Residential Tenancies Authority. The new confidentiality requirements are consistent with similar provisions in other fair trading legislation.

Fair hearing (section 31 of the Human Rights Act)

Clauses 109, 111, 115, and 117 may engage a person's right to a fair hearing if the chief executive refuses to renew or restore a property agent's licence or registration certificate, if the chief executive is not satisfied that 'exceptional circumstances' exist.

The right under section 31 of the Human Rights Act to a fair hearing affirms the right of all individuals to procedural fairness when coming before a court or tribunal. It applies to both criminal and civil proceedings and guarantees such matters must be heard and decided by a competent, impartial, and independent court or tribunal. What constitutes a ‘fair’ hearing depends on the facts of the case and requires the weighing of a number of public interest factors.

The Bill provides that failure of a property agent to undertake CPD requirements is grounds for the chief executive to refuse to renew or restore the person’s licence or registration certificate, unless the chief executive is satisfied that ‘exceptional circumstances’ exist that warrant the person being excused from undertaking CPD in the relevant period.

Consistent with existing arrangements under the Property Occupations Act, the Bill provides licensees and registration certificate holders with the ability to seek external review of a decision of the chief executive to refuse to renew or restore a licence or registration certificate, by the Queensland Civil and Administrative Tribunal (QCAT). In accordance with the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act), in all proceedings, QCAT must act fairly and according to the substantial merits of the case (QCAT Act, section 28(2)). Moreover, in conducting a proceeding, QCAT must observe the rules of natural justice (QCAT Act, section 28(3)(a)).

For these reasons, it is my opinion that the applicable review rights administered by QCAT in relation to CPD are compatible with the right to a fair hearing, which is protected by section 31 of the Human Rights Act.

If human rights may be subject to limitation if the Bill is enacted – consideration of whether the limitations are reasonable and demonstrably justifiable (section 13 *Human Rights Act 2019*)

Property rights (section 24 of the Human Rights Act)

(a) the nature of the right

Section 24 of the Human Rights Act provides that all persons have the right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person’s property. The ability to own and protect property historically underpins many of the structures essential to maintaining a free and democratic society based on human dignity, equality and freedom.

Property includes real and personal property (for example, interests in land, chattels, and money), including contractual rights, leases, shares, patents, and debts. Property can also include statutory rights and non-traditional or informal rights and other economic interests.

The term ‘deprived’ is not defined by the Human Rights Act. However, deprivation in this sense is considered to include the substantial reduction of a person’s use or enjoyment of their property, to the extent that it substantially deprives a property owner of the ability to use their property or part of that property (including enjoying exclusive possession of it, disposing of it, transferring it, or deriving profits from it).

The concept of arbitrariness in the context of the right to property carries a meaning of capriciousness, unpredictability, injustice, and unreasonableness – in the sense of not being

proportionate to the legitimate aim sought. Whether a deprivation of property is arbitrary therefore needs to be considered in light of the elements of proportionality. Clauses 112 and 118 of the Bill provide for penalties to be imposed for failure of both licensees and real estate salespeople to keep a record of the CPD requirements completed by the person and for the record to be kept for 5 years after the end of the CPD year to which the record relates.

Clause 119 of the Bill provides for penalties to be imposed for failure of a person who is or has been a public service employee performing functions under or relating to the administration of the Property Occupations Act, to keep specified information confidential, other than in prescribed circumstances.

Penalty provisions may impact on a person's property rights by depriving a person of property (money) by requiring them to pay a penalty for contraventions of legislation.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Penalties are provided in the Bill to encourage compliance with obligations under the Property Occupations Act. Specifically, the Bill provides for an obligation of licensees and real estate salespeople to comply with the requirement to keep a record of their CPD requirements, and for the record to be kept for 5 years (with maximum penalties of 10 penalty units) and for the obligation of a person who is or has been a public service employee performing functions under or relating to the administration of the Property Occupations Act to keep specified information confidential, other than under prescribed circumstances (with a maximum penalty of 35 penalty units).

The penalties are required to ensure there are sufficient deterrents against non-compliance with the new requirements. The new requirements in relation to record keeping and their associated penalties are consistent with existing penalties in the *Property Occupations Regulation 2014* regarding similar requirements. The new confidentiality requirements and associated penalty are consistent with similar provisions in other fair trading legislation.

As any penalties will be issued for failure to comply with, or breach of, particular provisions, the penalties are not arbitrary, and are therefore consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The penalties are directly and rationally related to the purpose of encouraging compliance with particular obligations under the Property Occupations Act, as any penalties will be issued for failure to comply with, or breach of, the obligations.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways to achieve the purpose of encouraging compliance with particular obligations under the Property Occupations Act.

While there would be the option to not provide a penalty for contravention of the relevant provisions, this may mean it is unlikely that the provisions will be complied with, and compliance with these new provisions is important in achieving the objectives of CPD.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, I consider that the limitations on property rights arising from the new penalties are outweighed by the importance of ensuring compliance with the relevant provisions of the Property Occupations Act.

Privacy and reputation (section 25 of the Human Rights Act)

(a) the nature of the right

The ‘privacy and reputation’ right (section 25, Human Rights Act) protects a person’s right not to have the person’s privacy, family, home, or correspondence unlawfully or arbitrarily interfered with and not to have the person’s reputation unlawfully attacked. Arbitrariness can be defined in a human rights context as meaning capricious, unpredictable, unjust, or unreasonable. This right includes protection of privacy in the sense of personal information, data collection, and correspondence.

Clauses 97, 108, 110, 114, 116 and new section 229C (Exchange of information) inserted by Clause 119 may limit a person’s right to privacy and reputation as property agents may be required to provide, to OFT, personal information if they indicate that they have not completed the CPD requirements due to ‘exceptional circumstances’ and the regulator may be authorised to share particular personal information with relevant agencies in specified circumstances.

Clauses 112 and 118 may also limit a person’s right to privacy and reputation, as property agents will be required to maintain records of training they have undertaken and may be required to make that information available to OFT for compliance and enforcement purposes. Records could include details of the name and address of a person, and the company they represent.

New section 229C (Exchange of information) inserted by Clause 119 may limit a person’s right to privacy and reputation, as the chief executive may enter into an information-sharing arrangement with a relevant agency to assist the chief executive or relevant agency to perform their functions.

(b) the nature of the purpose of the limitation to be imposed by the Bill if enacted, including whether it is consistent with a free and democratic society based on human dignity, equality and freedom

Property agents hold a position of significant trust in relation to their clients. Accordingly, the occupational licensing framework established by the Property Occupations Act aims to protect consumers through several measures, including allowing the chief executive to prescribe educational or other qualifications a person must meet to be eligible for a licence or registration certificate. The Bill aims to further increase the skills and knowledge of property agents, for the benefit of their clients, by requiring agents to undergo ongoing, periodic CPD.

The limitation on a person's right to privacy and reputation is to ensure that the chief executive can make an informed, fair decision about whether a property agent should be excused from CPD requirements for a particular period, due to exceptional circumstances.

In addition, the limitation on a person's right to privacy and reputation is to facilitate proportionate and appropriate monitoring, compliance, and enforcement of the proposed mandatory CPD requirements for property agents by OFT. Without capacity for OFT to monitor compliance with the CPD scheme, it is likely that some agents would not undertake their CPD obligations, which would reduce the benefits of the scheme for consumers and create an 'uneven playing field' for property agents that do comply with the CPD requirements.

The limitation on a person's right to privacy and reputation by permitting information sharing between relevant agencies is necessary for the effective administration of relevant legislation applying to property agents.

Therefore, obtaining, recording, and storing personal information, and exchanging information with relevant agencies, does not arbitrarily interfere with a person's right to privacy and reputation and is consistent with a free and democratic society based on human dignity, equality and freedom.

(c) the relationship between the limitation to be imposed by the Bill if enacted, and its purpose, including whether the limitation helps to achieve the purpose

The relationship between the limitation on a person's right to privacy and reputation through the obtaining, recording, and storing of personal information about a person is directly related to the purpose of requiring property agents to maintain and provide OFT with relevant information about agent compliance with the mandatory CPD requirements.

This will facilitate proportionate and appropriate monitoring, compliance, and enforcement with the CPD scheme and enable the chief executive to make informed, fair decisions about a request by a property agent to be excused from CPD requirements for a particular period, on the basis of 'exceptional circumstances'.

The limitation imposed on a person's right to privacy and reputation by the information-sharing arrangement is necessary for the effective administration of relevant legislation applying to property agents.

(d) whether there are any less restrictive (on human rights) and reasonably available ways to achieve the purpose of the Bill

There are no less restrictive or reasonably available ways of achieving the purposes of the amendments in the Bill in relation to the right to privacy and reputation.

In recognition of the potential limitation on the right to privacy and reputation, the Bill includes a specific confidentiality provision, which will be inserted into the Property Occupations Act, to ensure amongst other things, that the information-sharing arrangement and information collected and stored by OFT as part of its administration of the mandatory CPD scheme is appropriately safeguarded and protected.

(e) the balance between the importance of the purpose of the Bill, which, if enacted, would impose a limitation on human rights and the importance of preserving the human rights, taking into account the nature and extent of the limitation

On balance, I consider the limitation on the right to privacy and reputation of property agents is outweighed by the importance of ensuring that property agents further increase their skills and knowledge, for the benefit of their clients, by requiring agents to undergo ongoing, periodic CPD.

The potential limitations on the right to privacy and reputation imposed by the Bill are an important way of ensuring that the benefits of the mandatory CPD scheme, both for consumers and the property industry itself, are achieved through proportionate and appropriate monitoring, compliance, and enforcement. In addition, the potential limitations ensure that property agents who are unable to complete CPD for a particular period due to exceptional circumstances, can have their situation fully and properly considered by the chief executive.

In addition, the potential limitation on the right to privacy and reputation arising from information-sharing between relevant agencies is justified as a means of facilitating effective compliance and enforcement of relevant legislative obligations by the specified agencies.

The potential limitations on the right to privacy and reputation are appropriately balanced with the policy objectives of the Bill, particularly when considered in light of the confidentiality provision contained in the Bill, which aims to ensure that information collected and stored by OFT in the course of administering the CPD scheme is appropriately safeguarded and protected.

Amendments to the local government employee superannuation scheme

The amendments intend to align local government superannuation arrangements with regards to mandatory employee contributions with State Government arrangements for public sector employees which were introduced on 1 July 2023.

The human right to property rights under section 24 of the HR Act is promoted through the amendments.

Property rights protect the right of all people to own property alone or in association with others. They provide that a person must not arbitrarily be deprived of their property. Deprivation of property is not limited to, for example, a forced transfer or extinguishment of title ownership, but would include any ‘de facto expropriation’ by means of a substantial restriction in fact of a person’s use or enjoyment of their property.

The removal of a legislative requirement for an employee to contribute a percentage of their salary to their superannuation fund provide applicable employees with individual choice in relation to their property, as in this case, in superannuation and salary arrangements. As such, the amendments are not considered to engage human rights in a limitation perspective and no further analysis of these amendments under the HR Act is required.

Conclusion

In my opinion, the Residential Tenancies and Rooming Accommodation Amendment Bill 2024 is compatible with human rights under the *Human Rights Act 2019* because it limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the *Human Rights Act 2019*.

MEAGHAN SCANLON MP

Minister for Housing, Local Government and Planning

Minister for Public Works

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